IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA.No. 773 of 2000

OPMV.1095/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANTS/PETITIONERS:

1. KALPANA, W/O LATE BHARATHAN, MADAPPATIL HOUSE,KOZHIKULANGARA, CHAVAKKAD.

2. KRISHNENDU, AGED 2 YEARS (MINOR), D/O LATE BHARATHAN, DO. DO. REP. BY HER MOTHER KALPANA, 1ST APPELLANT.

3. CHEERU, M/O LATE BHARATHAN, DO. DO.

4. KANTHI, F/O DO. DO. DO.

BY ADV. SRI.P.T.JOSE

RESPONDENTS/RESPONDENTS:

1. V.RAMACHANDRAN, VADUKOOT HOUSE, AVINISSERY, THRISSUR.

2. THE MANAGING DIRECTOR, KSRTC, THIRUVANANTHAPURAM.

BY ADV. SRI.JOHNSON P JOHN, SC KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 773 of 2000

JUDGMENT

Koshy, J.

An autorickshaw driver, at the age of 35 years, met with a fatal accident, as his autorickshaw colluded with a stage carriage bus owned by the second respondent and driven by the first respondent. His widow, minor children, father and mother filed an application for compensation. The Tribunal found that there was 30% contributory negligence on the part of the deceased. Therefore, after assessing total compensation at Rs.2,54,000/- 30% was deducted and the compensation awarded as only Rs.1,77,800/-. The finding of contributory negligence as well as the quantum of compensation are seriously challenged in this appeal.

2. With regard to contributory negligence, the Tribunal found that even though FIR was filed showing that the first respondent was negligent and

he was charge sheeted, the scene mahazar would show that the accident occurred when the deceased was avoiding a gutter and the KSRTC bus suddenly applied brake, as there was tyre mark ten metres away from the accident spot. The scene mahazar would further show that after avoiding the gutter in the road, which is only having a width of 6.5 metres, the autorickshaw was almost middle on the road. Even though he may be justifed in avoiding the gutter, he can do so only if no vehicle is coming from the opposite side, otherwise he has to stop it. According to RW1, the accident occurred only due to the negligence of the autorickshaw driver. The Tribunal found that if the KSRTC bus was coming slowly, the driver could have stopped the bus. From the totality of circumstances, the Tribunal found 30% contributory negligence on the part of the deceased. We see no reason to interfere with the same in the absence of any other evidence in the case.

2. With regard to the income, the Tribunal has taken Rs.1,750/- as the monthly income and the yearly income was taken as Rs.21,000/-. The deceased was an autorickshaw driver by profession. He was earlier employed in Gulf, as can be seen from Exhibit A7. It is also argued that an autorickshaw driver will easily get Rs.150/- per day in the year 1998 and therefore, at least Rs.4,500/- should have been taken as the monthly income. It was further argued that since he was earlier employed in Gulf and there is every likelihood of going again, the future prospects also should have been taken for calculating the compensation. We are of the opinion that a professional autorickshaw driver will get at least Rs.100/- per day and Rs.2,400/- as the monthly income, taking the income for 24 days, he can get. If that be so, after deducting one third, Rs.1,600/- will be the monthly loss of dependency. The Tribunal has correctly taken 16 as the

multiplier, taking the guidelines from the second schedule. No case for enhancement of multiplier is made out by the appellants. Then the total compensation payable will be Rs.3,07,200/-. The Tribunal has granted only Rs.2,24,000/- under this head. Therefore, the additional compensation for loss of dependency will be Rs.83,200/-. 30% of the above has to be deducted for contributory negligence. Therefore, the additional compensation payable on this count will be Rs.58,240/-. It is submitted by the appellant that the amounts granted for loss of estate, loss of consortium and for love and affection are very low. Taking into account the total compensation awarded, we are of the opinion that no further enhancement is necessary on other heads. The above amount of Rs.58,240/- shall be deposited by the first respondent with 7% interest from the date of application till date of its deposit. On deposit of the amount, Rs.50,000/- shall be deposited in the name of the second

appellant/daughter of the deceased, which can be disbursed only at the time of her marriage. Out of the balance amount, including total interest, Rs.10,000/- should be disbursed to respondents 3 and 4 together and the balance amount should be given to the first appellant/wife of the deceased.

The appeal is partly allowed.

(J.B.Koshy, Judge)

13th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.773 of 2000

JUDGMENT

13th June, 2007